Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 20 and 24 of the	)	WT Docket No. 96-59
Commission's Rules -- Broadband	)	
PCS Competitive Bidding and the	)	
Commercial Mobile Radio Service	)	
Spectrum Cap	)	
	)	
Amendment of the Commission's	)	GN Docket No. 90-314
Cellular PCS Cross-Ownership Rule	)	

REPLY COMMENTS OF OMNIPOINT CORPORATION

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Introduction and Summary

Omnipoint Corporation ("Omnipoint"), by its attorneys, hereby responds to the comments filed in the above-captioned proceeding. Omnipoint urges the Commission to maintain two fundamental commitments it made to the auction process.

First, the Commission should not waiver from its statutorily-mandated goal that legitimate and successful entrepreneurs emerge from the PCS auctions as viable competitors to the traditional larger telecom giants. In this proceeding, several entities, including those that voluntarily dropped out of the Block C auctions, seek to have the Commission change its course and deny successful Block C applicants eligibility in all subsequent entrepreneur auctions. Such a decision would be unfair to Block C applicants who relied on Commission pronouncements, unfair to consumers who will benefit from rapid deployment of competing entrepreneurial systems, and fundamentally at odds with the policy goal of ensuring long-term, viable entrepreneurs in PCS.

Second, the Commission must remain dedicated to its long-held position of encouraging the emergence of an independent PCS industry by restraining the potential anti-competitive impact of incumbent cellular providers. While the Cincinnati Bell Court remanded to the Commission some of its rulemaking decisions for further support, it upheld the Commission's authority to impose spectrum caps. On remand, the Commission should reaffirm its commitment to a competitive and diverse mobile services market by maintaining the PCS spectrum cap of 10 MHz for an in-region cellular operator and tightening its cellular "affiliate" rule consistent with the Telecommunications Act of 1996.

While it maintains these two commitments, the Commission should also learn from the Block C auction and licensing process. Specifically, it should complete the final determination of Block C long-form applications prior to accepting short-form applications for the Block D, E and F auction. This would permit all Block D, E and F auction participants to know the Block C licensee for each market, it would allow Block C licensees to bid with the knowledge of the "fill in" markets they need, and it would greatly clarify eligibility issues. In addition, the Commission should reform its rules to close out bidding on markets that are no longer in play both to avoid the problems in the Block C auction and to improve on the current methods of expediting the auction, which have disadvantaged bidders rather than bringing the auction to a logical close.

Discussion

I. Legitimate Block C Applicants Should be Deemed Eligible to Participate in Subsequent Entrepreneur-Band Auctions

Successful Block C bidders that are finally determined by the Commission to be legitimate entrepreneurs through the long-form application process should be deemed *per se*

eligible to participate in subsequent entrepreneur auctions.[1] The Commission has consistently linked the Block C and F licenses by stressing the potential for a single entrepreneur to aggregate *both* licenses through the auction process.[2] With the 40 MHz PCS spectrum cap, it is more appropriate to consider the Block C and F auctions as part of one allocation process. Indeed, the Commission had first proposed to license the two in a single auction.[3] Further, the Commission's own rule that permits a growing entrepreneur-licensee's initial eligibility to continue on a going-forward basis, applies with equal, if not greater, force to this issue.

> We emphasize that we have a strong interest in seeing entrepreneurs grow and succeed in the PCS marketplace. Thus, normal projected growth of gross revenues and assets, or growth such as would occur . . . as a result of a licensee acquiring additional licenses . . . would not generally jeopardize continued eligibility as an entrepreneurs' block licensee.[4]

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1 Subsequent auctions would include the Block F auction, as well as the auction for Blocks D and E, if entrepreneur benefits are extended to those licenses, and any re-auctions of entrepreneur licenses.

2 *See* Comments of NextWave at 3-5, *citing*, Fifth Report and Order, PP Dkt. No. 93-253, 9 FCC Rcd. 5532, 5588 (1994) (In designating both the C and F blocks for entrepreneurs the Commission noted that "since the C and F blocks are adjacent, they can be aggregated efficiently by one or more licensees"). *See also* id. at 5579 (PCS band plan was modified on reconsideration by creating a contiguous licensed segment "in part to bolster the ability of designated entities to obtain more competitively viable licenses."). Because aggregation can be an effective means of rapid deployment and full service competition, Omnipoint strenuously objects to the proposition of Rendall and Associates (at 6) to prohibit the aggregation of Block F licenses with Block C, D, or E licenses.

3 Fifth Report and Order, 9 FCC Rcd. at 5546-47.

4 Fifth Memorandum Opinion and Order, PP Dkt. No. 93-253, 10 FCC Rcd. 403, 420 (1995); see also, 47 C.F.R. § 24.709(a)(3) (increased gross revenues or total assets from "debt financing, revenue from operations or other investments, business development or expanded service shall not be considered" when assessing a licensee's continuing eligibility).

Because the next entrepreneur auction(s) will take place only a few months after the Block C auction has closed, legitimate Block C long-form applicants should be deemed qualified for that auction, and subsequent entrepreneur auctions. Indeed, the vast majority of likely bidders for Block F licenses will have participated in the Block C auction.

As the Commission acknowledged, all Block C participants undoubtedly will face increases in nominal, "paper" assets as a result of receiving a Block C license or raising the capital necessary to pay for and build-out such a license. An entrepreneur's expansion to meet the enormous financial demands of actual PCS operation can only be deemed "normal growth." To classify Block C licenses as well as normal growth that occurred *during* the auction as "assets" relevant to qualify for subsequent entrepreneur auctions would contradict the Commission's policy objective of encouraging the emergence of strong, independent and long-term entrepreneur competitors.[5] Rather than encouraging entrepreneurs, the disqualification from the Block F auction of legitimate Block C long-form applicants would only fractionalize the entrepreneur community and exclude successful Block C entrepreneurs from acquiring an additional 10 MHz of spectrum necessary to initiate service rapidly and avoid the costs of incumbent microwave relocation.[6]

Moreover, Block C participants reasonably relied on the expectation that they would be permitted to participate fully in the entrepreneur's band. If the Block C and F auctions had been

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5 Fifth Report and Order, 9 FCC Rcd. at 5573 (FCC creates entrepreneur's band to "increase the likelihood that designated entities who win licenses in the auction become strong competitors in the provision of broadband PCS service"), & 5579 (entrepreneur's band auction rules are to "designed to promote strong, long-term bona fide competitors.").

6 Memorandum Opinion and Order, GN Dkt. No. 90-314, 9 FCC Rcd. 4957, 4979 (1994) (FCC changes license allocations from 20 to 30 MHz in order to encourage rapid introduction of service, avoid incumbent microwave relocation costs, and facilitate economies of scale); id. at 4981 ("we believe that some new entrants may need to acquire 40 MHz to fully realize their business plans . . . ").

held simultaneously, as initially decided, the assets of legitimate small businesses resulting from the debt incurred through the auction process itself or the capital raised to build-out and pay for those licenses would not be counted against the small business. This result should still hold, despite the Commission's decision to hold the entrepreneur auctions sequentially. Otherwise, an entrepreneur in the D, E, and F auction that did not participate in the Block C auction (or one that dropped out) could apply the $500 million asset cap solely to bidding dollars, without consideration of asset-value of the D, E, and F Block licenses, whereas the successful Block C bidder is penalized by the licenses it has won. Block C bidders have also reasonably relied on the expectation that they would be able to "fill in" markets after the Block C auction by obtaining Block F licenses. In this regard, we note that Block A and B licensees can and will do the same, but it is patently unfair to force successful Block C applicants to compete against those telecom giants simply because of Block C licensing and "normal growth."

The parties advocating the exclusion of successful Block C applicants are, for the most part, simply unsuccessful Block C bidders that voluntarily contracted or withdrew from the auction and now wish to narrow the field for the next entrepreneur's auction.[7] As such, their comments should have been made in the initial rulemakings establishing the PCS rules.[8] In those proceedings, the Commission addressed the issue of concentration of entrepreneur licenses with the cap of 98 Block C and F licenses, 47 C.F.R. § 24.710(a), and the PCS spectrum cap of 40 MHz per market, 47 C.F.R. § 24.229(c). The exclusion advocated by these parties fails to

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7 These unsuccessful Block C bidders include North Coast Mobile Communications, Airlink, Iowa L.P. 136, Gulfstream Communications, and Point Enterprises.

8 Some argue that Block C applicants should be excluded entirely from the Block F auction because some Block C winners are not legitimate small business entrepreneurs. *See, e.g.,* Comments of North Coast Mobile Communications at 2, 8. However, that issue should not cloud or confuse the determination that *legitimate* Block C applicants are eligible to participate in subsequent entrepreneur auctions.

address the Commission's policy to encourage viable and long-term small business participation in PCS. This policy is best furthered by including legitimate Block C long-form applicants in the pool of bidders for all entrepreneur PCS spectrum.[9]

II. The Commission Should Tighten its In-Region Cellular Restrictions To Promote Competition and Encourage a Diversity of Licensees

The Commission wisely complemented its entrepreneur-band rules with restrictions on the acquisition of PCS spectrum by incumbent cellular duopolists -- both actions promote the larger public goal of facilitating new competition. The current cellular eligibility rules are carefully crafted to impose a minimal burden, providing in-region cellular operators with the opportunity to bid on and win an additional 10 MHz of PCS spectrum (either a Block D or E license) and complete freedom in out-of-region markets.[10] At the same time, the cellular eligibility restrictions diversify the current market for mobile service by reserving three 30 MHz licenses (Blocks A, B, and C) for new entrants.[11] Because the Commission has previously

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9 Some parties assert that excluding Block C applicants will increase the numbers of entrepreneur licensees and thereby further the statutory goal of increasing diversity of licensees. Comments of Rendall and Associates at 3-4; Comments of North Coast Mobile Communications at 7; Comments of Cook Inlet at 10-11. This approach ignores the fact that the Block C auction itself will significantly increase the diversity of licensees -- there are currently 92 Block C high bidders. Further, the inclusion of Block C long-form applicants in subsequent auctions does not exclude any other qualified entrepreneur. Finally, Congress did not mandate that each entrepreneur license should be held by a separate entity, and so the Commission's and Congress' goals for long-term, viable entrepreneurs suggests that exclusion of Block C applicants is not, on balance, in the public interest.

10 47 C.F.R. § 24.204. The Commission's cellular eligibility rules are further tailored to permit (1) cellular participation in narrowband PCS, First Report and Order, GN Dkt. No. 90-314, 8 FCC Rcd. 7162, 7167 (1993), and (2) an additional 5 MHz of spectrum for cellular in the year 2000, 47 C.F.R. § 24.204(b).

11 If a cellular operator qualifies as an "entrepreneur," the Commission's rules do not prevent it from obtaining a Block F license overlapping with its cellular region.

determined that 30 MHz (and perhaps 40 MHz) are necessary for a new entrant to compete in the mobile service market,[12] the prohibition against cellular for these licenses is deliberately tailored to break down the barriers in the mobile service market faced by new entrants.[13]

The decision in Cincinnati Bell Telephone Co. v. FCC, 69 F.3d 752 (6th Cir. 1995), leaves the Commission free to maintain its current cellular eligibility rules. The Court remanded to the FCC the 20% cellular attribution standard and the cellular eligibility restrictions only for further factual and record support.[14] As discussed below, neither issue on remand should cause the Commission to waiver from its original purpose.[15] On the contrary, even the Court recognized that the Communications Act authorizes the Commission to establish cellular eligibility restrictions in order "to promote competition and avoid undue concentration of licenses."[16] The Court also held that the Commission may permissibly distinguish between cellular licensees and other mobile service providers that face more onerous regulatory, market, and technical hurdles than cellular.[17]

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12 *See*, n. 6, above.

13 A multitude of commenters urged the Commission to either retain or tighten the cellular eligibility restrictions. *See* Comments of Cook Inlet at 11-12; Comments of DCR Communications at 12-15; Comments of Telephone and Data Systems at 3-4; Comments of North Coast Mobile Communications at 15-18; Comments of Gulfstream Communications at 8; Comments of PersonalConnect at 4; Comments of Rendall and Associates at 11-12; Comments of Ken Bray at 2.

14 Id., 69 F.3d at 759, 764-65.

15 *Cf.*, Comments of CTIA, GTE, and Radiofone.

16 Id., 69 F.3d at 761-62. Given this finding, Radiofone is clearly in error when it speculates that any rule imposing eligibility restrictions would be arbitrary. Comments of Radiofone at 5.

17 *See* n. 27, below.

A. *The Restriction Against In-Region Cellular Acquisition of More Than 10 MHz of PCS Spectrum Keeps A Competitive Balance*

While several cellular entities argued that the Commission should permit cellular to obtain 20 MHz of PCS spectrum,[18] such a rule change would eviscerate a key safeguard in the federal policy of replacing the former cellular duopoly with a more competitive mobile service market. The Commission has found that cellular is "not the model of perfect competition" and, as a result, "the CMRS business is not fully competitive."[19] In addition, while it relied on the General Accounting Office Study finding that there exists "only limited competition in cellular telephone markets,"[20] the Commission's First Report on CMRS Competition offers independent findings of cellular market power that were not before the Cincinnati Bell Court. The Commission found three tell-tale indicia of a monopolistic industry. First, the prices of cellular offerings were substantially above competitive levels, as evidenced by recent significant price reductions in the face of competition.[21] Second, evidence indicates that cellular systems in major market areas "are earning economic rents of significant proportions."[22] Cellular firms in major metropolitan areas would not be able to sustain such profit margins without the FCC's prior policies supporting such market power, as discussed below.

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18 Comments of CTIA at 2; Comments of GTE at 6-10; Comments of ALLTEL at 9; Comments of Radiofone at 5.

19 Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, First Report, 10 FCC Rcd. 8844, 8866, 8872 (1994) (the "First Report on CMRS Competition").

20 July 1992 Gen. Acc'ting Off. Rep., Telecommunications: Concerns About Competition in the Cellular Telephone Service Industry, GAO/RCED-92-220 at 2.

21 First Report on CMRS Competition, 10 FCC Rcd. at 8851-52, 8871-72.

22 Id. at 8871, 8884-88 (Tables 9 through 13).

The Commission also noted the position of the Department of Justice, the expert agency entrusted with enforcing antitrust law, that "extensive investigations into the cellular industry . . . indicate that cellular duopolists have substantial market power. . . . The basic structural problem with cellular markets is well known -- the fact that they are and have been duopolies with (at least until very recently) absolute barriers to entry. . . . The noncompetitiveness of two-firms markets is exacerbated here by the overlapping alliances of the cellular carriers, so that firms that 'compete' with each other in one market are partners in another."[23]

While PCS promises to open up the local mobile service market, the continuation of two regulatory conditions have proven to be of enormous benefit to the cellular industry in the competitive environment. First, the FCC licensed cellular over ten years ago as a duopoly in each local mobile service market. This provided cellular in each market with the tremendous head-start advantages of: (1) development of a strong customer base; (2) duopoly profits for re-investment in system infrastructure; (3) greater flexibility and opportunities for site locations. Second, although cellular licensees enjoy the tremendous advantages of this regulatory head-start, the Commission charges them nothing for the use of the spectrum, while all other mobile service participants, including PCS and SMR small businesses, must pay the government billions to use the commercial spectrum.

Unless adequately addressed in this proceeding, these regulatory advantages would otherwise tend to skew market behavior against the introduction of new mobile services competition. However, Congress has charged the Commission with tackling that very problem and with encouraging the introduction of successful, vibrant new competition. 47 U.S.C. §§ 309(j)(3)(B)(auction rules should promote policy objectives of "economic opportunity and

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23 Id. at 8866-67, *quoting*, Memorandum of the United States in Response to the Bell Companies' Motion for Generic Wireless Waivers at 14-15, United States v. Western Elec. Co., Civ. Action No. 82-0192 (HHG), D.D.C., filed July 25, 1994 (quotation marks, citations, and punctuation omitted).

completion") & (j)(4)(C)(ii) (auction regulations shall promote "economic opportunity for a wide variety of applicants.").[24] Therefore, the Commission's decision to limit an in-region cellular operator to only one 10 MHz PCS license (not two) is fully supported by the regulatory and market differences that exist between PCS and cellular services.[25]

B. The Telecommunications Act of 1996 Guides the Commission to Lower the Cellular Attribution Rule to 10%

On remand, the Cincinnati Bell Court required the Commission to provide more substantiation for its 20% attribution rule for equity holders in a cellular licensee. The Commission had adopted the rule "to prevent incumbent cellular licensees from exerting undue market power in the Personal Communications Service market." Cincinnati Bell 69 F.3d at 758. According to the Court, the Commission's bright-line 20% ownership standard did not necessarily relate to the minority owner's ability to exert control over the cellular operator. Id. at 759. Essentially, the Court has remanded for further support the issue of whether a 20% equity holder of a cellular licensee is properly deemed an "affiliate" of the licensee.

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24 Similarly, the 1996 Telecommunications Act, passed after the Cincinnati Bell case, makes the introduction of competition for local telecommunications a national policy goal. *See*, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Notice of Proposed Rulemaking, CC Dkt. No. 96-98, FCC 96-182 at ¶ 8 (released April 19, 1996) ("In the 1996 Act, Congress boldly moved to restructure the local telecommunications market so as to remove economic impediments to efficient entry that existed under the monopoly paradigm.").

25 In upholding the Commission's decision discriminating between cellular and other mobile providers, the Court recognized that "different characteristics of the two markets justifies the FCC's decision to adopt different rules for each of the two kinds of wireless services." Cincinnati Bell, 69 F.3d at 765 & n. 5 (Court upholds FCC's decision to restrict cellular operators but not SMR or MSS operators). Similarly, less than complete parity between services that are not identical -- in this case, cellular and PCS -- actually promotes the Commission's goal of effective competition between the services.

The 1996 Telecommunications Act, however, answers the Court's concern with the adoption of the following general statutory definition of "affiliate:" "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term 'own' means to own an equity interest (or the equivalent thereof) of *more than 10 percent.*" 47 U.S.C. § 153(33) (emphasis added). This provision establishes that the Commission should deem a 20% equity holder to be an owner and an "affiliate" of a cellular licensee. No further independent record is required.

In fact, the 20% equity limit is more generous than the Communications Act permits. Because its cellular eligibility rules were promulgated to provide "economic opportunity for a wide variety of applicants," 47 U.S.C. § 309(j)(4)(C)(ii), the Commission should amends its rules to prevent any entity holding more than 10% equity of an overlapping cellular licensee from holding an attributable interest in more than 10 MHz of overlapping PCS spectrum.

C. The CMRS 45 MHz Spectrum Cap Should Be Retained

In its December 20, 1995 decision denying Radiofone's "Emergency Request for Stay" of the Block C auction, the Wireless Telecommunications Bureau rejected the notion that the Cincinnati Bell decision calls into question the Commission's 45 MHz CMRS spectrum cap.[26] The Bureau held that the Court had "expressly left intact the 45 MHz limit." Id. at ¶ 3. The Bureau further found that Radiofone's request for a rulemaking to amend the 45 MHz spectrum cap was without merit: "We believe that it is very unlikely that the Commission would . . . reexamine the merits of the 45 MHz spectrum cap, which was adopted a little over a year ago to promote competion [sic], discourage anti-competitive behavior and create incentives for innovation and efficiency in CMRS, including broadband PCS." Id.

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26 "Request of Radiofone, Inc. for a Stay of the C Block Broadband PCS Auction and Associated Rules," Order, DA-95-2496 (Acting Chief, WTB, rel. December 20, 1995).

The efforts by some commenters to overturn the 45 MHz spectrum cap in the wake of the Cincinnati Bell remand, *see, e.g.,* Comments of Radiofone at 5, should be ignored for the same reasons the Wireless Bureau rejected it four months ago.

III. The Block C Long Form Application Process Must Be Completed Before Commencement of the Block D, E and F Auction

The Block C auction and the decisions made by the Commission in the long-form application process will have a significant impact on the Block D, E and F auction. First, all auction participants will need to know who the Block C licensee is in each market in order to: (a) assess the relative value of each 10 MHz Block at auction, (b) plan auction strategy, (c) evaluate opportunities for auction or post-auction partnerships, or (d) determine its eligibility to hold the license or the eligibility of other auction participants.[27] Further, as is now common knowledge, the financing structures of several parties have been challenged; the Commission itself recently released a public notice regarding the proper use of foreign investment and debt financing, which will be further explicated as specific entrepreneur structures are ruled on.[28] The Block C petition to deny process and the Commission's licensing decisions promise to clarify greatly for all entrepreneurs which financing arrangements are permissible and which are not. Entrepreneurs in the Block D, E and F auction need adequate time to ensure that their own financial structures conform with those eligibility decisions. Perhaps most importantly, because most of the Block F bidders are likely to be Block C bidders, it is inappropriate to allow the

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27 For example, a Block C long-form applicant or a 5% or more investor in that applicant would be restricted from acquiring more than one 10 MHz license in a BTA where it also holds the Block C license.

28 "C Block Bidders Reminded to Consider Distinctions Between Debt and Equity For Foreign Ownership and Broadband PCS Auction Rules," Public Notice, (released April 15, 1996).

Block D, E, and F auction to start and then subsequently disqualify active entrepreneurs during that auction, as the Commission decides challenges to the Block C long-form applications.

For these reasons, the Commission should conclude its Block C long-form application decisions before short-form applications are due for the D, E and F auction. Omnipoint estimates that, even under such a timetable, the D, E and F auction could still commence 90 to 120 days after the end of the Block C auction.

In addition, the Block C auction teaches that there is certainly a better way to end an auction. Omnipoint strongly supports the simultaneous, multiple-round auction method; indeed, it has proven to be amazingly ingenious in most respects. However, the Block C auction experience has demonstrated that keeping every BTA open for every round until there is no longer any bidding on any BTA places extremely unfair burdens on all bidders. In the Block C auction, the Commission has apparently decided that it will encourage the end of the auction by imposing ever more rounds per day until there is no time to produce results and analyze decisions. Further, the entrepreneur's decision-makers are forced into the auction process for the entire business day, making it impossible to schedule other business or travel. For example, the Commission is going to 8 rounds of auctions per day in less than a nine hour period. Because auction participants must sign-on, bid, analyze round results, and determine withdrawal options in each round for 493 BTAs, the 8 rounds per day only forces bidders to review results at a rate of less than 10 seconds per BTA, or, worse yet, make mistakes or miss critical decisions. This is simply not a rational way for a small business to make multi-million dollar decisions. *See*, Fifth Report and Order, 9 FCC Rcd. at 5552 ("It is in the final stages of an auction, when the consequences of bidding decisions are greatest, that bidders need the most time to deliberate.").

Instead, the Commission should close the auction in stages by shutting down groups of markets based on population size after 40 or more rounds once no license in that group has been bid on for 20 rounds.

This method has enormous advantages. The activity rules and importance of the markets cause the largest markets to be bid on early in the auction, thus they would stop as a group first. As the required activity level increases, there are fewer bidders able to bid on the largest markets. As each license group is closed for bidding, fewer and fewer bidders are affected. Given enough notice, (for example, notice that, if after round 40 there are no bids on any of the top 25 markets for 20 rounds, they close as a group), no bidder can claim to be disadvantaged. This method also reduces the 5% reserve of the largest bidders during state III (from the 95% activity rule) and thus greatly reduces the problem in the Block C auction caused by at least one bidder with a 5% reserve large enough to create a *de facto* Stage IV, which required every other bidder to be on alert in every round as against that single bidder and caused small businesses to consume weeks of precious time guarding themselves against attack.

The Commission has explicitly contemplated such a procedure: "we will retain the discretion to declare at any point after 40 rounds in a simultaneous multiple round auction that the auction will end after some specified number of additional rounds. This gives the Commission a means to prevent bidders from continuing to bid on a few low value licenses solely to delay the closing of all licenses in an auction . . . If we exercise this option, we favor the use of three final rounds."[29] The Commission could provide bidders with even more than three rounds of advanced notice prior to implementing a closure on a given BTA so that all participants would be fully prepared and could bid appropriately. In contrast, the current Block C procedure -- with eight rounds per day starting tomorrow -- undermines the fruits of the Commission's rational, simultaneous, multiple round approach.

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29 Fifth Report and Order, 9 FCC Rcd. at 5551-52.

Conclusion

The Block D, E and F auction will complete the Commission's initial allocation of broadband PCS licenses. With this proceeding, the Commission can and should uphold its commitments to encourage the entry of new and long-term PCS entrepreneurs and to release consumers from the market stranglehold of the former cellular duopoly.

Respectfully submitted,

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